

GENERAL AND REVENUE SECRETARIAT.

191.
(Courts.)

File No. 187 of 0304

Serial Nos. 1 to 4

Papers Filed.

✓
Month June 04

SUBJECT.

Investiture of power to withdraw cases, to the Prosecuting Inspector of Kolar Gold Fields.

PREVIOUS REFERENCES.

LATER REFERENCES.

Continued

Indexed Bhattacharya

Mysore Govt. Secy
~~Office of the Dewan of Mysore.~~

File No. (if any)

Directions.

No., date and purport of receipts to be entered in red, and office note in black ink in order of dates.—To be written only on one side, and inside the line of margin.

(File No. Y 71903-24)

Office Note.

Branch — judicial

Subject : — Prosecuting Inspector

Letter No. $\frac{5813}{304}$ d: 24-3-04 from the J.-G. of Police
requesting instructions as to whether —
can withdraw prosecutions under Sec: 494
Crl. Procedure Code

The Inspector General requests instructions
as to whether a Prosecuting Inspector appointed by Govt. to conduct prosecutions
is a Public Prosecutor within the meaning
of Sec: 492, Criminal Procedure Code and
whether he can withdraw prosecutions
under Sec: 494, Criminal Procedure Code.

The Govt. Advocate, who was consulted by
the Insp: Genl, is of opinion that the
Prosecuting Inspector cannot withdraw

File No. 1

a case under Sec: 494 Cr. P. Code as he is
not appointed as a Prosecuting Inspector
under Sec: 492 Cr. P. Code

In Madras Police Prosecuting Inspectors
are Public Prosecutors appointed by Govt
with ref^{ce} to Sec: 492, Cr. Procedure Code
and the Dy Commr, Kolar Dist., recommends
that the same status may be extended to
the Prosecuting Inspectors in this State.

Subd for order. There is only one Prosecuting
Inspector in the State, viz at the Kolar
Gold Fields & ~~his duties are to~~
~~conduct prosecutions of~~
cases before the Spl Magistrate, Kolar
Gold Fields (Flag A)

Flag A
13 Nov 1901, S. No 1-4, File No-131.

SW
21/12/04
The restriction in para 29
S. 492 of the Cr. P.-C. with regard
to a temporary Public Prosecutor
not being a police officer below the
rank of Asst Super, does
not apply to a Public Prosecutor
apptd. by Govt under para 1 of
that section

The Prosecuting Inspector, ³ H. J. Fields has not been appointed a Public Prosecutor under s. 492 & the question is whether it is necessary that he should now be. The Insp's letter does not enable us to judge whether any serious inconvenience is being felt ~~for the want of~~ ^{in the absence of} such appointment. We may therefore be asked to ~~submit~~ ^{explain} clearly ~~the~~ ^{the} inconvenience felt, & in how many cases. Put up a draft -

[Signature]
3.3.04

Subd. with a draft, as directed, to Secy

[Signature]
4.4.04

SR
24/4/04

Subd to the Secy
through the 1st Div. *[Signature]*
6/4/04

[Signature]
6.4.04

1000
7-4-04

Yes - A Prosecuting Inspector is not a Public Prosecutor under section 492 & I am not sure that this appointment as such is desirable. The enquiry proposed may be made.

17079
8.4.04

This seems to be a Police matter - not judicial *[Signature]*

[Signature]
11/4/04

Yes - *[Signature]*
9.4.04
7-4-04
Sd/- Secy
G. J. S. *[Signature]*
G. J. S. *[Signature]*

In reply to the enquiry made as directed
 above, the Inspector General of Police
 (Mr. F. E. Carr) forwards a copy of
 letter from the Dy Commr, Kolar Dist
 (Mr. Puttanna Chetty) stating that there
 is no immediate necessity to instruct the
 Prosg Inspector to withdraw cases ...
 Sec: 494, Cr. P. Code; and states that
 he concurs with Mr. Puttanna Chetty
 (The latter has given good reasons for
 his opinion) —
 Subd with a draft order recording the
 above.

SR
 24/6/04 To Secy
 thro' 2^d C.R.

Recd
 24/6/04
 25/6/04

They further may
 be dropped from
 the present and
 draft appearance

25/6

As the Dy Commr does not want order
 on his reference, the draft-4
 kept without further submt, in the
 25/6/04

JH 78

1903-04.

From

The Inspector General of Police
in Mysore.

SECTION Courts
To,
FILE No. 157 of 03-4
Serial No. 1

The Secretary to the Government
of H.H. the Maharaja of
Mysore in the Genl and Rev.
Departments.

Dated 22nd

Despatched 24 March 04

Received

General No. 5873/364
No.

Enclosure.

Requesting orders whether a Prosecuting Inspector appointed by Government to conduct prosecutions is a Public Prosecutor within the meaning of Section 492-C.P.Code and whether he can withdraw prosecutions under Section 494 C.P.C

J. M. L.
26.5.04

J. M. L.
26.5.04

No 5813 ²
364

Office of the

Inspector General of Police in Mysore.

From,

24 March 1904

The Inspector General of Police in Mysore.

To,

L. Anantasami Rao Esquire, B.A.,

Offg. Secretary to the Government of His Highness the
Maharaja of Mysore in the General and Revenue
Departments.

Sir,

I have the honor to state that the Deputy Commissioner of the Kolar District with his letter No. C 1004 of the 23rd February 1904 forwarded for favour of instructions Copy of letter No. 1579 of the 9th idem addressed by the 1st class Magistrate of the Kolar Gold Fields to the Registrar of the Chief Court requesting to be informed whether a Prosecuting Inspector appointed by Government to conduct prosecutions is a Public Prosecutor within the meaning of section 492 Criminal Procedure Code and whether he can withdraw prosecutions under section 494 Criminal Procedure Code.

*Copy sent
Chief Court
Mysore
24 March 1904
Anthon...*

On this I addressed the Government Advocate for his opinion on the points raised. He has in his letter No. 177 of the 11th March 1904 stated that the Prosecuting Inspector cannot withdraw a case under section 494 Criminal Procedure Code as he is not appointed as a Prosecuting Inspector under section 492 Criminal Procedure Code.

In continuation of his previous correspondence, the Deputy Commissioner, Kolar, has forwarded copy of letter No. 954 dated 9th March 1904 from the Assistant Inspector General of Police, Madras, stating that Police Prosecuting Inspectors are "Public Prosecutors" appointed by Government with reference to section 492 Criminal Procedure Code, with a recommendation that the same status may be

*Whereas
then*

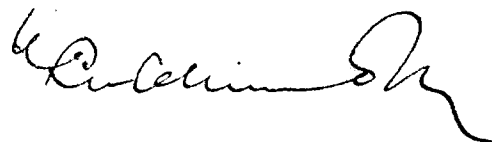
extended

extended to the Prosecuting Inspectors in this Province also. I accordingly beg to submit the question for favour of early orders of Government.

I have the honor to be,

Sir,

Your most obedient servant,

A handwritten signature in dark ink, appearing to be 'G. L. ...', with a long, sweeping flourish extending to the right.

Inspector General of Police in charge.

Li
checked *CH*
Office Draft. (Letter.)

Mysore Government,
General & Revenue Secretariat,

Just Branch:

SECTION Courts.

FILE No. 1570/03-4

SERIAL No. 2

7/4/04

To

The Inspector General of Police
in Mysore.

Date of passing the draft

Date of despatch

13th April 1904

Regd. No.

File No. & date (if any)

2163

7.13/202-03

No. of Encls.

His letter No. 5813 dated the
304

22nd March 1904, requesting instruc-

tion,
-tions as to whether a Prosecuting

Inspector appointed by Govt.

to conduct prosecutions in Cr.

Cases is a Public Prosecutor

within the meaning of Sec: 492

of the Cr. Pro: Code and whether he

can withdraw prosecutions under

Sec 494 of that Code

Adverting to the
above.

above, has the honor to enquire whether 5.
any serious inconvenience is being felt
~~by the absence of~~ ^{owing to} the present Prosecuting
Inspector of the Kolar Gold Fields not
being appointed as a Public Prosecutor
under Sec: 492 of the Criminal Procedure
Code, and if so ^{to request that particulars of the instances} ~~in how many cases~~
^{in which such inconvenience was felt}
~~A clear and detailed report of such cases~~
may be given

By order

4/4/04

Offg Secretary

Mr
4/4/04

Typed.
12/4/04

III Aug 16

1903-04. 6 A 1897

From,

The Inspector General of Police
in Mysore

To,

SECTION Courts.
FILE No. 1570/03-04
SERIAL No. 3

The Secretary to the Govt: of
H. H. the Maharaja of Mysore
in the Genl: & Reve: Departments.

Dated.

Despatched. 21 June 1904

Received.

General No: 7507/470
No:

Enclosure No: 1

Stating that there is no immediate necessity to invest the prosecuting Inspector on the Kolar Gold Fields with power to withdraw cases.

No: 7527

470

7
L-3

Office of the

Inspector General of Police in Mysore

Dated Bangalore, 15th June 1904.

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From,

F. E. C. Carr Esquire,

Inspector General of Police

in Mysore.

To,

L. Anantasami Rao Esquire, B. A.,

Offg: Secretary to the Government of

His Highness the Maharaja of Mysore

in the General and Revenue Departments.

Sir,

Reference:-

Your docket No: 2163/J. 13 of 02-03 dated 13th April 1904 requesting the particulars of instances, if any, may be given in which any serious inconvenience was felt owing to the present Prosecuting Inspector at the Kolar Gold Fields not being appointed a Public Prosecutor under section 492 of the Criminal Procedure Code.

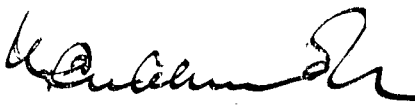
-----po0oq-----

I have the honor to forward herewith ---- copies of letter No: C.1767 of the 31st May 1904 and of its enclosures from the Deputy Commissioner, --- Kolar, stating that there is no immediate necessity to invest the Prosecuting Inspector on the Kolar -- Gold Fields, with power to with-draw cases. I concur with Mr: Puttanna Chetty.

I have the honor to be,

Sir,

Your most obedient servant


Inspector General of Police

8

1904.

*Enclosure to
Serial 3*

From,

K.P. Puttanna Chetty Esq

District Magistrate,

Kolar District.

To,

F.C. Carr Esqr.,

Inspector General of Police

in Mysore ,

Bangalore.

Dated 31st

Despatched May 1904.

Received

General No. C 1767

Enc No. Two.

9 Office of the District Magistrate,
Kolar District.
Dated May 1904.

From,

K.P. Puttanna Chetty Esquire.
District Magistrate,
Kolar District.

To,

F.E.C. Carr Esqr.,
Inspector General of Police in Mysore,
Bangalore.

Sir,

I have the honor to forward herewith in original, letter No. 460 dated 13 th May 1904, from the District Superintendent of Police, Kolar Gold Fields, together with the Memo of the Prosecuting Inspector, addressed to you in reply to your reference No. 6368/313 dated 21-4-04, enquiring whether any serious inconvenience is felt owing to the Prosecuting Inspector not being appointed a Public - Prosecutor under section 492 C.P.C and to state as follows:-

2. The letter from the District Superintendent of Police and the Memo of the Prosecuting Inspector do not state what serious inconvenience is felt owing to the present Prosecuting Inspector not being appointed a Public Prosecutor under section 492 C.P.C. A Prosecuting Inspector was sanctioned for the Court of the Assistant -- Commissioner and 1st class Magistrate, Kolar Gold Fields, with a view to have a full- time prosecutor for all the Police cases coming up before the said Court, from the different Police Divisions on the Kolar Gold Fields, and also to assist in the preparation of the Police charge-sheets to be produced before the Court.

3. The arguments put forward by the Prosecuting Inspector in his Memo apply to all Courts in the Province and do not refer to any particular difficulty felt in this Court.

4. Cases under the Mining Regulation in which mining material is concerned, form the majority of cases on the file of this Court

and

and are the only class of cases peculiar to this Court, which do not come up before the other Courts of the same grade in the Province; but a withdrawal of any such cases is not possible as the confiscation or other disposal of the mining property produced will have to be ordered and the cases should therefore be proceeded with to the final stage of enquiry. The trespass and other complaints against ^{mining} coolies referred to in the Memo, are cases that may be tried summarily. The Prosecuting Inspector further quotes heinous offences under sections 363, 325 and 326 I.P.C which are also Sessions cases, where the withdrawal of prosecution may be more safely left in the hands of a higher tribunal and a duly appointed Public Prosecutor. The principle underlying the withdrawal of cases is not, I think, properly understood by the Prosecuting Inspector as he apparently wishes to extend it to compoundable cases. The power to withdraw cases has to be exercised with great care and caution as instances may be readily imagined where such a power may be abused in collusion with the parties concerned. It is therefore generally limited to Public Prosecutors under section 492 C.P.C and to the discretion of the higher Courts, viz the Sessions and Chief Courts, with a view to prevent vexatious prosecutions and unnecessary harassment of parties, taking up at the same time the valuable time of the Judges presiding over such Courts. For inferior Courts provision is made for withdrawal of cases by parties in Sections 247, 248 and 345 of the Criminal Procedure Code.

5. Taking all circumstances into consideration, I think there is no immediate necessity to confer the power on the Prosecuting Inspector at the Kolar Gold Field.

I have etc.

Sd/ K.P. Puttanna Chetty.

District Magistrate,

Kolar District.

" C O P Y "


Inspector General of Police.

1903-04. //

From,

P.F. Bowring Esqr.

District Superintendent of Police.

Kolar Gold Fields.

To,

F.E.C. Carr Esqr.,

Inspector General of Police in Mysore,

thro: the Deputy Commissioner

Dated 12th May 1904.

No. 460

Enclosure No. One.

Sir,

In answer to your No. 6368/313 dated 22-4-04 forwarding copy of Secretary's docket No. 2163/J13 dated 13-4-04 enquiring whether any serious inconvenience is being felt owing to the present Prosecuting Inspector of the Kolar Gold Field not being appointed as a Public Prosecutor under section 492 C.P.C, I have the honor to forward herewith the Prosecuting Inspector's Memo, and to state that in my opinion it would be well if the Prosecuting Inspector were invested with powers to withdraw cases.

I have etc.

Sd/ P.F. Bowring.

District Superintendent of Police

Kolar Gold Fields.

" C O P Y "


Inspector General of Police.

Enclosure to 12
Serial E.

Submitted .

With reference to the District Superintendent's Memo No. 728 dated 26-4-04 enclosing docket No. 6368
313 from the Inspector General of Police and copy of that from the Secretary to Government I beg to report as follows:-

In some of the ~~non~~ compoundable cases difficulty arises as to how we have to proceed where both the parties are reconciled to each other and are reluctant to push further criminal proceedings. Instances of this kind are not wanting.

In a case of kidnapping under sections 363- 366 I.P.C. Bowringpet Taluk, where a near relative of the girl kidnapped, being in love with her for a time, took the opportunity and eloped with her to the Fields where he stealthily married her without the knowledge and consent of any of the parents or guardians. When the wronged parents found this out they at once rushed to the Police and required them to investigate the case and charge-sheet the accused husband. When the case was proceeding before the Magistrate the complainant — opened his eyes and saw the gravity of the offence and the likely result

of the prosecution which would seriously affect the interests of the girl, and was finding out a means to avert this result; when he could not withdraw the case legally he would have recourse to tamper with the prosecution witnesses and so on. The offence committed and proved in such instances will only be technical. But when withdrawal by the Public Prosecutor, of cases is provided for in the Court of Session under section 494 why should it not be so made in a lower Court alone by the Prosecuting Inspector and avoid further waste of time and energy of the parties concerned and of the Higher Court?

In a case of grievous hurt under sections 325 and 326 I.P.C. where the complainant charged his brother-in-law after a lapse of time, he thought of the serious consequences and wanted to withdraw the charge. (Both the sections were non-compoundable then though one of the sections 325 is made compoundable under the new Criminal Procedure Code). Neither the Prosecuting Inspector nor the Court could help him in the matter then, and he had to adopt the illegal means of bribing the Prosecution witnesses to forswear and get his relation out of the scrape. This of course would mean serious risk for the witnesses in as much as it would render them liable for criminal prosecution for perjury .

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perjury under section 193 I.P.C. and 161 C.P.C. (The elimination of truly in the new Procedure Code sec 161 has removed this risk from off their shoulders though it has nullified the value in their statements before the Court.)

In such cases of delicate nature in which near blood relatives are parties concerned and when the results of criminal Prosecution are anything but desirable if the legislature does not provide for the withdrawal of such prosecutions it would operate more as a hardship to parties than serve any useful purpose.

There is yet another Category of cases in which withdrawal of Prosecution is very desirable.

The Police bring in very weak cases those that are weak at the outset those that get weak subsequently on account of the witnesses being won over by love or money and others in which, subsequent to the charge-sheeting, new circumstances of an over-whelming and reliable nature, lost sight of by the Police in their investigation, are brought to light to show the view taken by them was incorrect. As an instance under this head a number of trespass and other cases reported against their coolies by the Mining Company

Company Servants to the Police and investigated by them on very meagre information furnished may be quoted. These cases have more often fallen through than succeeded. In such cases what is the purpose of proceeding with the enquiry? Instead of taking this course and getting a discharge or acquittal of the accused after an amount of time and energy of all parties concerned (Police, parties and Court) being wasted it would be desirable to legalise the withdrawal of the charge by the prosecuting Officer. When such withdrawals are provided for in the Court of Sessions by the Public Prosecutor under section 494 C.P.C the extension of the same provision of withdrawals by the prosecuting Inspector in the lower courts would obviate much inconvenience and trouble.

The power of withdrawal under reference by the prosecuting Inspector may not be confined only to non-compoundable cases. It may also extend to compoundable ones apart from the fact that in the latter ones parties concerned might themselves be allowed to compromise and thus stop criminal proceedings. Such compromise will only have the effect of acquittal of the accused person under section 345 C.P.C whereas regular withdrawals under section 494 by an Officer empowered to do so will have a different effect. So the right of withdrawing prosecutions both

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in compoundable and non-compoundable cases in the lower court may vest with the Prosecuting Officer irrespective of the rights of the parties under the Criminal Procedure Code.

Sd/ M. Keshaviah.

11-5-04 Prosecuting Inspector.
-----S-----

" C O P Y "


for Inspector General of Police.

Read: 17

Letter No. ~~1897~~ ~~754~~ 5813
362

SECTION Courts dated the 24th March 1904 from
FILE NO. 157 of 03-4
SP. 4
the Inspector General of Police
in Mysore requesting instructions
as to whether a Prosecuting
Inspector appointed by Govt. to
conduct prosecutions in criminal
cases is a Public Prosecutor
within the meaning of Sec:
492 of the Criminal Procedure
Code & whether he can with-
draw prosecutions under Sec:
494 of that Code

2 Letter No. 7547 dated
470

the 21st June 1904 from the
Ins^r same officer stating
in reply to Govt. docket

No. 2163 dated the 13th April
J. 131-0203
1904

1904 that there is no im - 181

mediate necessity to invest
the Prosecuting Inspector ^{of the} Khan
old fields with power to
withdraw cases under sec
494 of the Criminal Pro-
cedure Code.

Order No. 2796 of 29/6/04
J1314-02-03

Recorded

~~1/1~~
24-6-04
RW
25/6/1804
Offg Secretary

The M. of Police in reply.

SN
23/6/04

23/6/04